Assembly Bill No. 943

CHAPTER 392

An act to amend Section 12640.04 of the Insurance Code, relating to mortgage guaranty insurance.

[Approved by Governor September 16, 2003. Filed with Secretary of State September 17, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 943, Chavez. Mortgage guaranty insurance: contingency reserve.

Existing law requires each mortgage guaranty insurer to establish a contingency reserve, and requires an annual contribution to the reserve in a specified amount. Existing law permits the insurer to make withdrawals in any given year to the extent by which incurred losses exceed 35% of earned premium, or as otherwise permitted by the commissioner.

This bill would require that provisional contributions to the contingency reserve, in specified amounts, be made on a quarterly basis and would change the way the required contributions are calculated, as specified. It would require the commissioner's approval to make withdrawals from the reserve when incurred losses exceed 35% of the total year-to-date net earned premium.

The bill would also allow a mortgage guaranty insurer, with the commissioner's approval, to withdraw from the contingency reserve any amounts in excess of the policyholders surplus, as described. It would authorize the commissioner to consider certain records and conditions in reviewing a request for withdrawal, and would require the commissioner to make a specified finding when approving a withdrawal.

The bill would specify the way in which releases and withdrawals from the contingency reserve are to be accounted for, and the order in which additions, releases, and withdrawals are to be considered in developing the reserve.

The people of the State of California do enact as follows:

SECTION 1. Section 12640.04 of the Insurance Code is amended to read:

12640.04. (a) In addition to the paid-in capital and surplus provided in Section 12640.03, each mortgage guaranty insurer shall establish a contingency reserve after establishment of the unearned premium reserve. There shall be an annual calculation of and contribution to the contingency reserve. The aggregate annual contribution shall be the greater of either 50 percent of the net earned premium or the policyholders surplus required to be established under Section 12640.05 divided by 10. There shall be provisional contributions, made on a quarterly basis, equal to 50 percent of the net earned premium for the preceding quarter.

(b) The contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months. That portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.

(c) With the approval of the commissioner, withdrawals may be made from the contingency reserve when incurred losses exceed 35 percent of the total year-to-date net earned premium. Provisional withdrawals may be made on a quarterly basis from the contingency reserve in an amount not to exceed 75 percent of the withdrawal calculated in accordance with this subdivision.

(d) With the approval of the commissioner, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the policyholders surplus required to be established under Section 12640.05 as indicated on the most recent annual statement filed pursuant to Section 923. In reviewing a request for withdrawal, the commissioner may consider those records that may be necessary to evaluate the request, including, but not limited to, records relating to loss development and trends. If any portion of the contingency reserve for which withdrawal is requested is maintained by a reinsurer, the commissioner may also consider the financial condition of the reinsurer. If any portion of the contingency reserve for which withdrawal is requested is maintained in a segregated account or segregated trust and withdrawal would result in funds being removed from the segregated account or segregated trust, the commissioner may also consider the financial condition of the reinsurer.

(e) Releases and withdrawals from the contingency reserve shall be accounted for on a first-in-first-out basis.

(f) The calculations to develop the contingency reserve shall be made in the following sequence:

(1) The additions required by subdivision (a).

(2) The releases required by subdivision (b).

(3) The withdrawals permitted by subdivision (c).

(4) The withdrawals permitted by subdivision (d).

(g) The commissioner's review of a request for withdrawal under subdivision (d) shall be conducted pursuant to his or her examination authority under Section 730 and at the expense of the insurer pursuant to Section 736. The commissioner shall make a finding, set forth within the documents approving any withdrawal, that the withdrawal, and any reduction in total assets that may follow the withdrawal of which the commissioner is aware at the time of his or her approval, will not reduce the cash or securities of the insurer in a manner that will materially, adversely impair the ability of the insurer to maintain its credit rating or meet future obligations.

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